

IN ASSEMBLY, MAY 4, 1846.

REPORT

Of the select committee on the subject of capital punishment.

Mr. Titus, from the select committee to whom were referred the numerous petitions from various counties of the state, asking for the passage of a law to abolish the death punishment,

REPORTS :

That the committee, fully recognising the importance and solemnity of the subject committed to their consideration, have, so far as their opportunities would allow, carefully examined and seriously deliberated upon the same; and feeling deeply the critical responsibility attaching to legislation on so serious a matter, and knowing the vital interests involved in the final settlement of the question, they have endeavored to release their minds from the influences of preconceived opinions, and from that habit of thought incident to old associations and connected with institutions of long standing. They have studiously desired to strengthen themselves against that weakness of our nature, which, however amiable in its character or gratifying in its indulgence, does, nevertheless, through our sympathies and sensibilities for the criminal; warp the judgment and relax its determination. Under such a sense of their duty, and with the earnest wish to arrive at a conclusion which, having truth for its foundation, should be best calculated to promote the welfare and security of society, the committee proceeded in their investigation of the subject, and after calm and mature deliberation, a majority of their number (being as four to one,) have become convinced that the death punishment is not enjoined upon society by any divine commandment, and that the civil enactments requiring its execution, are unjust and inexpedient. The majority of the committee desire herewith to present some of the considerations which have induced such a conviction on their minds. They would first state that there has been received by the House, and referred to them one hundred and thirteen petitions from

various counties, containing in the aggregate 7,580 signatures, and but one remonstrance with 112 signatures. The petitioners ask for the immediate passage of a law for the entire and final abolition of the death punishment, because they consider it barbarous in its character, ineffectual to the suppression of crime, demoralizing in its tendency, and at variance with the spirit of christianity. The remonstrants, being all inhabitants of a single town in the county of Orange, protest against the repeal of the law inflicting the death punishment upon the murderer, and “do petition the Legislature not to pass an act repealing such law, which in their view is not only just, but indispensibly necessary for the general safety and good of society;” and in support of their views, they adduce many arguments and considerations, which the committee read with great interest and attention, but which failed to produce on the minds of the majority the conviction desired.

The majority of the committee desire explicitly to state, that in the arguments and reasoning which we shall adduce in support of the position we have assumed, we claim for ourselves nothing of originality—our sole desire is, as distinctly and forcibly as our ability and limits will permit, to compile the arguments and reasoning of those authors through whose writings our own minds have been brought to the conviction that the death punishment should be abolished; and we would here mention that the considerations and arguments which we are about succinctly to state, will be found set forth in an elaborate manner, and with great force and beauty of style, in the following works, and to which we beg particularly to refer all who take an interest in the subject, viz : Robert Rantoul, Jr.’s report to the House of Representatives of Massachusetts, Feb. 22, 1836 ; John L. O’Sullivan’s report to the House of Assembly of the State of New York, April 14, 1841 ; Essays on the Punishment of Death by Charles Spear; Thoughts on the Death Penalty, by Charles Burleigh ; and The Spirit of the Age, published under the supervision of the New-York State Society for the Abolition of Capital Punishment.

We will first view the subject in its religious aspect. The committee are aware that scripture arguments are not usual, and cannot be claimed as binding in the legislative halls of a land of universal toleration in religion, still they think it would be an unjust appreciation of the sentiments of the members of this Legislature, who have prescribed daily prayers from the preachers of the scriptures as a service preparatory to the performance of their legislative duties, should they omit to state what light and instruction is to be derived

from the Bible, upon the solemn and important subject under consideration; and most especially is it incumbent on this majority of the committee so to do, from the knowledge that the opponents of the abolition of the death punishment rest their chief argument upon the Mosaic code and Noahic covenant, thereby possessing an adventitious advantage in the discussion of the subject, arising out of the difficulties existing in the minds of many, from an undue estimation of the force of Jewish law on modern society, from a misconstruction of some passages of the scriptures, from a disregard of others, and by neglecting to apply to the question the divine precepts as prescribed in the Gospel of Christ.

The advocates of the death punishment would be left without scripture ground for the support of their argument, were they debarred from their appeal to the Noahic covenant, and the code of Moses; aside from that code and that covenant, the Scriptures afford no authority for an institution which outrages all those better feelings of our nature, as developed by civilization and matured by refinement in society, and religiously confirmed by the benevolent influences of the Gospel. It is therefore a question of momentous importance for them to answer, whether the laws which God was pleased to prescribe for the control of his creatures, whilst yet in a state of society but a little above savages, and before he had seen fit to reveal to them a clear knowledge of their future destiny, were intended to be applicable to the whole human family, through all successive ages, and in every stage of society; whether existing as savages, and herding together as the beasts which share in common with them their native forests; or whether associated in refined societies, with all the advantages of learning and science, and with the full light of the Gospel revealing the true nature of man and his future destiny. We will briefly examine the subject in connection with these considerations. The Israelites were a peculiar people in their nature, propensities, and habits as well as in their particular relation as a nation to the Ruler of the Universe. They were stubborn in their purposes, reckless in the gratification of their passions, besotted by gross indulgences, improvident, ungrateful, impious, and rebellious alike against their own civil institutions and the commandments of God, directly and miraculously manifested to them. They were a stiff-necked and hard hearted people, just released from a degrading bondage, and, as has been said of them, did, "at that time exceed any of the present hordes of savages in the wilds of Africa or Tartary in slavish ignorance, sordid vices, loathsome diseases, and brutal lusts." It was for the government of a nation of such people, that the code of Moses was instituted—a people

who had but a faint revelation, if any, of their future destiny. All their hopes and all their rewards, all their fears and all their punishments were confined, in their estimation to this life. To keep together in society such a class of citizens, existing under peculiar circumstances, required restraints more vigorous, and punishments more frightful, than can be well apprehended by those who enjoy the advantages of a more refined state of society, and who, through the revelations of Christ, can look forward from this state of existence to the future.

To show how entirely inapplicable the provisions of the Mosaic code are to society existing under the benign influence of the present age, we will here state the number of capital offences in the Mosaic code, as we found it compiled in Spear's excellent Essay on capital punishment.

NUMBER OF CAPITAL OFFENCES IN THE MOSAIC CODE.

Murder, -----	Exod. xxi. 12
Kidnapping, -----	" " 16
Eating leavened bread during the Passover, -----	" xii. 15
Suffering an unruly ox to be at liberty, if he kill; the ox also to be stoned, -----	" xxi. 29
Witchcraft, -----	" xxii. 18
Bestiality, the beast put to death, -----	" xxii. 19
Idolatry, -----	" xxii. 20
Oppression of widow and fatherless, -----	" xxii. 22
Compounding holy ointment, or putting it on any stranger, -----	" xxx. 33
Violation of the Sabbath, -----	" xxxi. 14
Smiting of father or mother, -----	" xxi. 15
Sodomy, -----	Lev. xx. 13
Eating the flesh of the sacrifice of peace offerings, with uncleanness, -----	" vii. 20
Eating the fat of offered beasts, -----	" vii. 25
Eating any manner of blood, -----	" vii. 27
Offering children to Moloch, -----	" xx. 2
Eating a sacrifice of peace-offering, -----	" xix. 7
Screening the idolater, -----	" xx. 4
Going after familiar spirits and wizards, -----	" xx. 6
Adultery, [both parties, if female married, and not a bond maid,] -----	" xx. 10
Incest, [three kinds,] -----	" xx. 11
Cursing of parents, -----	" xx. 9

Unchastity in a priest's daughter,-----	Lev. xxi. 9
Blasphemy, -----	" xxiv. 16
Stranger coming nigh the tabernacle, -----	Numb. i. 51
Coming nigh the priest's office,-----	" iii. 10
Usurping sacerdotal functions,-----	" iv. 20
Forbearing to keep passover, if not journeying,----	" ix. 13
Presumption, or despising the word of the Lord,----	" xv. 30
Uncleanness, or defiling the sanctuary of the Lord,--	" xix. 13
False pretension to the character of a divine mes- senger, -----	Deut. xiii. 5
Opposition to the decree of the highest judicial au- thority, -----	" xvii. 12
Unchastity before marriage, when charged by a hus- band, -----	" xxii. 13

MODES OF PUNISHMENT FOR CAPITAL OFFENCES.

Sword, -----	Exod. xxii. 24
Stoning, -----	Lev. xx. 2

POSTHUMOUS INSULTS.

Burning of the body,-----	Lev. xx. 14; Josh. vii. 15
Hanging of the body,-----	Deut. xxi. 22
Heaping of stones over the body or place of burial,--	Josh. vii. 25

MODES INTRODUCED FROM OTHER NATIONS.

Decapitation, -----	2 Sam. iv. 7
Sawing asunder,-----	Heb. xi. 37
Strangulation.	
Crucifixion.*	

“ What a dark catalogue! How minute in its delineation of offences! Every avenue of passion seems to have been guarded by a severe penalty. We ask its advocates if they are willing to take it entire for a guide to morals? Or will they contend that a part only is binding at the present day? If so, what part? Shall ‘ he that smiteth father or mother be put to death?’ Shall this penalty be inflicted on ‘ the man that gathers sticks upon the Sabbath day?’ Shall it be inflicted on him who ‘ stealeth a man and selleth him?’

* See Introduction to the Holy Scriptures. By T. H. Horne. Vol. iii, Part II., ch. III, sect. iii. and iv. Michaelis's Commentaries, vol. ii, pp. 365—367; vol. iv. pp. 1—212. Jahn's Biblical Archaeology, § 252, *et seq.* Academical Lectures on the Jewish Scriptures, vol. i. By John G. Palfrey, D.D.

Or on him who afflicts any widow or fatherless child?" Alas! if we were tried by this standard, imperfect as it was, we should find we were weighed in the balance and found wanting!"

The penalty of the death punishment is not prescribed in any more explicit or mandatory terms for murder, in the Mosaic code, than it is for each of the other crimes enumerated under that code as capital offences. Why, then, if it is incumbent upon society by divine precept to put the murderer to death, are we released from the same dreadful injunction in the punishment of the remaining offences of that long catalogue? Many of those sins are of frequent occurrence in society at the present day, and that too under circumstances calculated to aggravate the crime, and, whilst most of them are entirely overlooked by the criminal prosecutor, the remainder are only amenable to comparatively slight penalties. In connection with this part of our subject, we beg leave to quote the pertinent remarks of the late Elisha Williams, of Hudson. He says :

"The principal, and in truth the only plausible, ground from which advocates for capital punishments endeavor to derive a right to inflict them, is the authority of the Sacred Scriptures. They contend that the laws established in Israel were dictated by the Almighty, and that they punish a multitude of crimes with death. Certain it is, that the purposes which those laws were intended to accomplish, were wise and benevolent; and that, confined to the sphere in which they were designed to operate, their divine original is a sufficient justification of the penalties by which they were enforced. But that their jurisdiction was limited to the Jewish nation, is rendered equally certain by the character of that nation, and the whole tenor of those laws. Their jurisdiction could only be co-extensive with the crimes they prohibited, many of which were exclusively confined to the tribes of Israel. The situation of those tribes rendered all punishments impracticable but such as were summary. Deprived, therefore, of the facilities which fixed habitations and a more settled mode of life would have afforded for the prevention of crime, they were reduced to the necessity of adopting the only effectual means within their reach. In addition to which, it is to be observed, that the laws of Moses were promulgated only in Israel, and that they were never attempted to be imposed on any other nation. As, therefore, they were in their operation merely local, it is vain to attempt to justify capital, or any other punishments, under their authority.

“But if these laws are obligatory on us, we must suppose the obligation general. We cannot be permitted to select such portions as will suit our purpose, and throw aside the rest as useless and inapplicable. The various parts must stand or fall together; and to infer the justice of a penalty from its having been sanctioned by the laws of Moses, presupposes the absurdity, that it would be fit and proper to adopt and execute the whole body of those laws at the present day.

“But if it be admitted that the Mosaic laws confer the right of inflicting any punishment, I am at a loss to discover from what source the contradictory right of dispensing with its infliction, is derived. Their requisitions are peremptory, and obedience to them cannot be optional. To attempt to establish a principle by virtue of laws which we are at liberty to violate, is building upon the sand. We must therefore abandon, either the right of inflicting capital punishments under the Mosaic laws, or the right of pardoning offences, for they are irreconcilably opposed to each other.

“If it be said that capital punishments are inflicted, not by authority, but in imitation of the Jewish laws; I answer that, to justify us in following this example, our political situation and the objects of our civil institutions, our relations and our necessities, should be similar to those of the Jews. For, as the policy of laws is modified by these considerations, so their justice is often dependant upon them; and imperative necessity may at one time require what at another would be improper and inexpedient. If the example of the Jews will warrant us in inflicting capital punishments, it will likewise warrant us in the cruelties of savage warfare—in destroying the aged and infirm—the helpless and the innocent.”

The Mosaic code was instituted for a peculiar people, and who, at the eventful period in their history when those laws were enacted, were existing under a theocracy established through the intervention of Moses, a leader and law-giver especially provided and commissioned by God for the emergency in which the nation was then placed. But that code was not established so as ever after to be of general application to the whole human race. The prophets, which were from time to time commissioned from Heaven to foretell to that people the changes which should take place in their nation and in its institutions, predicted the abrogation of that code. And in the New Testament we have throughout the evidence and testimonies of Christ and of his Apostles that the essential features of Jewish law had

been abrogated under the new revelation. Christ himself says, in reply to the Pharisees, in reference to the Mosaic law, "For the hardness of your heart he wrote you this precept."—*Mark* x. 5. And again the same divine commentator says, "The law and the prophets were until John : since that time the kingdom of God is preached."—*Luke* xvi. 16. The apostle St. Paul, referring to the old priesthood as being but the type of the new in Christ, says, "For the priesthood being changed there is made of necessity a change also of the law."—*Heb.* vii. 12. And in rebuke of the Galatians for their adherence to the old law, he writes, "But now, after ye have known God, or rather are known of God, how turn ye again to the weak and beggarly elements, whereunto ye desire to be in bondage." These, and other evidences to the same effect, are cited by Mr O'Sullivan in his masterly report.

The penal and criminal parts of the Mosaic code, which were only applicable to that race and to those times, have passed away; but such parts as are immutably right, still remain in full force and ever will continue, not because they were parts of that code, but because they are the truth. A misconception of the Mosaic code, we think, prevails in the minds of many, and which, we believe, goes far to trammel the judgment of most in the consideration of subjects dependant upon Scripture authority. The matter is so distinctly and forcibly set forth by Mr. O'Sullivan, in his report, that we cannot deny ourselves the satisfaction of inserting it in this.

"There is another point of view in which this question is by many regarded, which the committee consider it incumbent on them here to present, without, however, feeling called upon for any expression of individual opinion in relation to it. It may be thus stated A distinction should be observed between two ideas which are often confounded, in our reasoning upon the principles of the Jewish code. We are apt to apply to all the legislation of Moses, as developed in the books of his statutes, the term the LAW OF GOD, which ought not perhaps to be extended beyond the Ten Commandments which were given as the constitutional basis of the laws afterward framed by him in detail. For, however these latter may be spoken of as being dictated to Moses by the command or inspiration of God, it does not require any very forced construction of language to understand such passages in a sense entirely harmonious with this view of them. However highly, however superhumanly endowed for the purposes of his mission, in his age and nation, we may regard the mighty old Prophet, Priest, and Legislator here referred to, it by no means ne-

cessarily follows that we must regard as having the origin of an express divine inspiration the whole code of laws and regulations drawn out by him, (with the counsel and aid of his pagan father-in-law, Jethro, the Midianite,) for the hierarchical organization and future government of the nation which he was founding. And in condemning and rejecting, as we all do, by the light of the better wisdom shed upon our world by the Star of Nazareth so many crude, cruel, and unchristian features of his code, there is no more implication of an impeachment of the wisdom or the goodness of God, than in condemning the imperfections of any other system of laws which the same Supreme Governor of the Universe has at different times allowed to be framed and applied to practice among nations, by lawgivers whom we must also regard as the mere instruments in his hands, as all men are in their respective missions, for the execution of the great purposes of his wise providence. The laws of the Ten Commandments rest on a different foundation. Written, as we are told, by the finger of God himself, on the two tables of stone, and delivered to Moses from his direct hand, amid the awful solemnities to which the elements where the ministering attendants, in these we should not expect to find anything at variance with our highest conception of the nature and attributes of *their* Author. Upon these we should not expect to find change or shadow of change. Nor do we. We find in them the assertion of great principles, plain, broad, and universally true, and forever wise and good, however imperfect may have been the application which Moses makes of them to practice, in founding on them his peculiar system of theocratic institutions—the best system, probably, of which the actual condition and character of the people for whom it was framed were capable. The great principles of law for the government of mankind here referred to, instead of being repealed, we find re-enacted and on all occasions magnified by Christ, at the same time that he analyses them down to their two essential ideas, of Love to God and Love to man. These laws are often referred to in the New Testament, and are styled, by eminence, *the law, the law from Mount Sinai, the moral law, the law of God, the word of God, the commandments of God, &c.* But the laws of Moses to the Israelites are constantly treated as national, temporary and human. They, too, are often quoted in the New Testament, and are called *the laws of Moses, the commands of Moses, the sayings of Moses, carnal ordinances, carnal commandments, types, shadows, &c.* These are never, it is believed, styled in the New Testament, *the laws of God*; and this important distinction is clearly kept up throughout the New Testament, between these tem-

porary and national laws of Moses, and the unchangeable and external laws of God.”*

Although it is admitted by our opponents that the penal and ceremonial parts of the Mosaic code have been abrogated, still they will claim that the command, “Whoso sheddeth man’s blood, by man shall his blood be shed,” is to be considered as retained, and they refer to the positive language in which it is conveyed, and to the general bearing of its terms in support of their position. To it they continually resort in reply to all arguments adduced by the advocates of the abolition of the death punishment, so much that the phraseology of the text has been appropriately called the city of refuge for the freinds of the gallows. The importance which is attached, in all discussions relative to capital punishment, to this passage of the Old Testament induces us particularly to notice it in connection with this part of our subject. We, however, feel assured we cannot do it more advantageously than to quote from an article in the late January number of the North American Review. The author states his views on this branch of the subject in the following argumentative manner :

“The alleged proof of a divine command or permission lies in a single passage if we may not say in a single word. ‘Whoso sheddeth man’s blood, by man shall his blood be shed.’—Gen. ix. 6. *Shall*; on that one word, in that one verse, depends the scriptural argument. Change the word to *will*, which both the Hebrew and the English language permit, and the passage will express simply the great retributive law of God’s providence, that violence begetteth violence; as in the Psalms : ‘Bloody and deceitful men shall not live out half their days.’ But leave the passage as it is; the first part of it will bear a different rendering, though the common version seems to us as natural as any. We admit that the Hebrew future often stands for the imperative; but it does not always stand for it; and whether it does here, or has only the force of the future, as in Cain’s assertion — ‘Every one that findeth me *shall* slay me’—depends on the context, and other considerations. Thus the whole argument becomes an inference; and different men—men, too, who do not differ in their general religious views—draw different inferences from the context, and express opposite opinions as to the passage. Professor Stuart, of Andover, thinks the Hebrew for ‘shall be shed’ is ‘the most *passive* form which the language admits.’ Professor Upham, of Brunswick, says, it has

* See Appendix to the Essays on Capital Punishment, by Philanthropos. Philadelphia; S. Merritt, 1812.

'the indefinite form of the Hebrew future,' and finds in it neither command nor permission. Professor Turner, of the Episcopal Seminary, New-York, says it may be permissive, but can not be obligatory. All scholars will allow that the verb is future, and no one can assert more than that it may be imperative, and is so in his opinion. Is this proof? Is it a sufficient foundation for the system that has been reared upon it? But grant it; on whom is it imperative? To whom does it give even permission to take life? Its words are, "By man shall his blood be shed," And the preceding verse says,—“At the hand of every man's brother will I require the life of man.” May the murderer be put to death by any man, or by the brother of the murdered man? This is the literal sense, if you adhere to the literal; it is the intimation of the context, if you judge by that. And more, it was the interpretation of the passage in that age, so far as we know of its being used. Singularly enough, it is never afterward referred to in the Bible, though so constantly referred to now. Moses subsequently slew a man, but did not apply the passage or its penalty to his own case. In this code, it is said,—“The revenger of blood himself shall slay the murderer; when he meeteth him, he shall slay him.” There is another clause of the context, which was made a part of the Jewish ritual, but has never been observed by Christians. It is the injunction to abstain from “flesh with the life thereof, which is the blood thereof.” It stands in close connection with the favorite passage. If one be imperative, universal, and perpetual, why not the other?

“The proof is not made out; the burden is heavier upon the advocates than they seem aware. They must first show that the passage has necessarily the imperative force; then, that it is a permanent and universal ordinance, though others near it are not; then, that in itself, or the context, it gives to government, and not to individuals, the right and duty of killing the murderer; then, that it was ever applied by the Deity himself, or by any of his servants and commissioned ministers, except in the Mosaic code; and lastly, that, in principle and spirit, it has not been repealed by him who abrogated its fellows,—“An eye for an eye, and a tooth for a tooth.” We have reason to say “its fellows,” for, besides the principle, there is a fact here to which we call earnest heed; namely, that the law of retaliation, which Christ did abrogate, comprised originally the very law of life for life. “Life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”—Deut. xix, 21. Another fact deserves notice. If Jehovah designed this as the principle of social order and eternal justice, is it not remarkable, that, when he was the only lawgiver, judge and punisher, he not only spared the life of the murderer, but forbade any

one to slay him, and said nothing even of his deserving death; Mr. Cheever has his own way of accounting for this, and using it. He intimates that this "divine lenity" was a chief cause of the wickedness of men before the flood, and was revoked by the Deity when he saw the abuse. "God spared Cain, and the consequence was, since no murder could ever be committed under more aggravating circumstances than that of Abel, that every murderer felt secure." Thus the experiment of a milder legislation, as another writer has declared, was first made by the Deity, and failed! We might ask, if the bloodiest code of Moses answered a better purpose? But no irreverence. Admitting the bold intimation, it does not remove the difficulty. There seems to have been the same "divine lenity," after the supposed enactment of life for life. Moses became a murderer; and God spared him also, though the act was revengeful and deliberate. Before this, but after the command, Simeon and Levi, sons of the patriarch Jacob, committed a treacherous and most foul murder on all the males of a city, because one of them had "defiled their sister;" the same offence, avenged more horribly and infamously, yet in the same way, as that of Mercer recently, where the murderous brother was saved by acclamation. Simeon and Levi were not so rescued, but simply let alone. Jacob reproved them, but no application or mention was made of the existing "imperative law." And omitting all inferior cases in the history, David was a murderer, in every just view; adding this great sin to another, which was also capital in his own code. But he also was spared the ordained penalty. Is the fact, then, established by the passage, by the context, or by subsequent events, that the penalty of life for life was imperative, of universal obligation, always observed and enforced by the Deity, never repealed or even virtually superceded by the Savior? Is it, can it be, proved?

"We have said the proof rests on a single passage. No other passage has ever been quoted for the purpose from the Old Testament, to our knowledge; none so strong, none indeed having the aspect or pretence of a commandment and universal law, can be found in any part of the Scriptures, as all will concede; and should this passage be relinquished, half the advocates of capital punishment would abandon the ground of divine authority. It is, then, a very serious question, whether this one passage, at the most and the best, is so clear and unquestionable as to be rightfully or safely taken as the foundation of a fearful system of criminal law, for all nations, and all ages, world without end."

Whilst we claim that such parts of the Mosaic code as were only applicable to the Israelites and their times have been done away under the New Testament, still we both admit and contend that all that was immutably right, and all that was morally good in that code, was retained and confirmed by Christ. Conspicuously in that code stands the command "*Thou shalt not kill,*" and no where do we find that Christ or any of his apostles ever abrogated or qualified this portion of the law of God as promulgated originally through Moses. Christ's sermon on the Mount, all his teaching as reported to us by the evangelists, all the precepts of his apostles and the entire tone of the New Testament, serve as a re-enactment and confirmation of that portion of the Mosaic code, and that, too, without any qualification or exception. It is no where said in the New Testament, thou shalt not kill *except in certain cases*. When Christ prescribed to the young man, as a rule for his moral conduct, the third, sixth, seventh, eighth, and ninth commandments, (see Matthew xix. 18, 19; Mark x. 19; Luke xvii. 20,) he did not qualify the sixth, or allow of any exception under particular circumstances. Each and all of those commandments are specifically repeated and positively enjoined without any qualification.

The New Testament is appealed to in vain by the advocates for capital punishment. No where in it can there be found a text which even when mystified by the sophistry of an ingenious casuist, or rendered captivating by the eloquent commentary of an orator, can force upon an unprejudiced mind the conviction that it was God's will, as revealed through Christ, that society should in sober reason and in cool blood *kill* the murderer, or the incendiary, or the traitor.

The only instance of a capital crime which is recorded as having been adjudicated by Christ, is that of the adulterous woman; by the law she was liable to be stoned to death--the proof was positive, and her conviction complete. What was the sentence pronounced upon that criminal by the divine commentator on the Mosaic code? Let all those who are so ready to cry out "hang him," "put him to death," "he does not deserve to live," consider well the sentence and apply it to their own hearts, "He that is without sin let him cast the first stone;" and furthermore let those who are willing to send to his final account the sinner, without any reference to his preparation for that awful tribunal, learn from Christ's words to that sinner how to feel for and act towards the unfortunate criminal, "And Jesus said neither do I condemn thee; go and sin no more."

We feel that it would be altogether supererogation for us to enter into an argument to prove that, under the revelation made to us by

Christ, we are to have mercy and not sacrifice, that we are to call sinners to *repentance*, that we are to forgive the brother that sins against us until seventy times seven, that we are not to take an eye for an eye nor tooth for a tooth, nor to requite evil for evil, nor to retaliate blow for blow.

All the precepts of the New Testament with reference to offences are the opposite of those of Moses. We have enumerated the long catalogue of capital offences as recognized by the latter and evincing its spirit; that of the former is manifested by the following injunctions: "Judge not, and ye shall not be judged: condemn not, and ye shall not be condemned: forgive, and ye shall be forgiven;" "Be ye therefore merciful as your Father is also merciful;" "*Recompense to no man evil for evil.*" The contrast between the old and new law is forcibly stated in Spear's Essay in these words:

"No one, who has glanced over the New Testament, but must have seen the totally different spirit of the new and the old law. Moses addressed the *injurer*, Christ the *injured*. Moses says to the one who has mutilated his neighbor, 'Eye for eye, tooth for tooth.' Christ says to the injured person, 'Ye have heard that it has been said, eye for eye, tooth for tooth, but I say unto you not to requite evil; but whosoever strikes you on the one cheek, offer to him also the other.' Moses taught retaliation. Christ taught submission. Moses made his enemies die for him. Christ died for his enemies. Moses regulated the outward actions. Jesus regulated the heart. Moses was mortal. Christ was divine. Moses was sinful. Christ was sinless. Moses was a teacher to a single nation. Jesus is the teacher of a world. Moses required sacrifice. Jesus required mercy. Moses violated his own laws. Christ exemplified his in every action. 'For if that which is done away was glorious, much more that which remaineth is glorious.'

"Our laws are founded on Moses, not on Christ. 'Life for life' is written on every code in the Union. Moses is our master, not Christ. We say to the criminal, 'life for life.' Christ says, 'be of good cheer: thy sins are forgiven thee.'"

We do not consider it incumbent upon us to notice certain distorted applications of texts from the New Testament, which the advocates of the death punishment sometimes adduce as authority under Christ for the support of their argument: as where they cite Jesus' words, "All they that take the sword shall perish by the sword," and St. Paul's words "If I be an offender, or have committed anything

worthy of death, I refuse not to die;" and again, speaking of a ruler figuratively, "He beareth not the sword in vain." It is a heavy tax on our charity to suppose that those passages can be so apprehended by any intelligent reader, as to be considered a specific authority for an institution which is so revolting to that tone of feeling inculcated throughout the teachings of Christ and his apostles, and which is in such direct conflict with those precepts to which we have already referred.

Our opponents in this discussion frequently object that Christ did not condemn the law against which we contend; and they instance, as if conclusive against us, that, when the penitent robber who was crucified by his side, acknowledged his punishment was just, Jesus did not contradict it. There would, perhaps, be some plausibility in this plea, if it had been the habit of Christ to reprimand the faults or to attempt a reform in the evils existing in the civil or criminal institutions of nations. His revelations and instructions were to individuals, and were, that they should first seek the kingdom of Heaven, and then all things were to be added thereunto. He laid down general principles of morals and religion, out of which were to spring particular reformatations. A writer quoted by Spear, on this head, says:

"It is apparent, throughout all Christ's teachings, that he was careful to confine himself to the great object of his mission, that of flinging broadcast over the earth, to make their eventual way to its remotest corners, the imperishable seeds of great principles, to the natural germination and growth of which, slow but certain, he committed all the practical social reformatations which, in the ripeness of time, were to be their fruit. Wisely abstaining from attacking directly even those existing civil institutions most essentially at variance with those principles, he thus, by the words of power which he sent forth, planted at the very depth of their roots a blight which would not fail, earlier or later, to wither them to their topmost branches, and soon to bid them cumber the ground, and mar the fair face of the earth no more."

We have entered more freely into the scripture view of this subject than is perhaps altogether warranted in a legislative document; but we felt constrained so to do from the conviction that with a large portion of our citizens these considerations, being the source of deep-rooted prejudices and preconceived opinions, forestall their judgment and control their action. What we have now said and the authorities we have quoted, we trust will have the effect to remove the scruples

of those, who, under the influence of old associations and an established habit of thought, arising either from the absence of a critical investigation, or from a misconception of the force of the Mosaic code as applicable to our age and society, have refused even to allow the proposition of this humane reform to be freely discussed. We think in our view of the subject, as in connection with the Bible, we have shown that Scripture argument in favor of capital punishment is limited; that the testimony derived from that source is doubtful; that translations vary; that the word "shall" is not always imperative, and is not so apprehended by us in many Scripture passages; and finally, that the text, "Whoso shedeth man's blood by man shall his blood be shed," is not now a law, whatever it might have been. From this branch of the subject, we next proceed to a brief review of those considerations which induced, in the minds of a majority of the committee, the conviction that the death punishment is unjust.

An institution so horrible in its nature and so momentous and eternal in its consequences as the death punishment, should be solely based upon the strict principles of justice—and no plea of expediency nor citation of precedents should avail in its defence if it cannot be proved to be equitable as between man and man, and righteous towards the criminal. The question to determine is indeed momentous, and we approach it with all the embarrassment which naturally arises where our feelings are liable to be brought in conflict with our judgment.

The relation which men stand towards each other in society, are complex—being in part determined by those immutable principles of right which we acknowledge, as a revelation of the divine will—and in part established by the precepts of that government to which we acknowledge our allegiance. As regards the former, if we take the Bible as our rule of conduct, we think we have shown it is not there enjoined on us as a duty to deprive the murderer of his life, nor is it required of him to surrender his life as an atonement of his offence. On the contrary, as against executives, it is there claimed as a divine prerogative, "Vengeance is mine and I will repay it"—and to law-makers it is prescribed, "Recompense to no man, evil for evil"—and of the criminal it is said, "As I live, saith the Lord God, I have no pleasure in the death of a sinner; but rather that he should *turn from his wickedness and live;*" and Christ said to the woman guilty of a capital offence, "Go and sin no more."

As regards the right of government to take the life of a citizen under the compact by which it is properly constituted, great doubt exists in the minds of many; and the number who entirely deny it, is daily increasing. The legitimate object of government is the protection of life, liberty and property; and where an action having any other purpose or design, is claimed as an appropriate prerogative vested in the law-makers or in the executive, then that government becomes tyrannical and unjust. All the authority and power properly existing in government is constituted by the surrender of a portion of the natural rights of its citizens, and this concession is made because it becomes necessary to secure us in the peaceful enjoyment of all rights not surrendered. The history of society shows it is the tendency of all governments to assume rights which are not granted, and to arrogate the exercise of power beyond their appropriate sphere. When government claims the right to take away life, does it not act in direct contravention of one of the chief purposes for which it was constituted—the protection of life? When the compact is made, whereby the authority of government is established, and by which powers are conferred upon it, can the individuals forming that compact, grant the right to deprive them of their lives? Have they themselves any such control or disposition of their lives? Can such a compact be justly made? Can such powers be justly conferred? In answer to these important questions, we will here quote the forcible language and close reasoning of Rantoul's report :

“ When we surrendered to society the smallest possible portion of our liberty, to enable us the better to retain the aggregate of rights which we did not surrender, did we concede our title to that life with which our Creator has endowed us? Is it to be conceived that we have consented to hold the tenure of our earthly existence at the discretion, or the caprice of a majority, whose erratic legislation no man can calculate beforehand? While our object was to preserve as little impaired as might be possible, all our rights, which are all of them comprehended in the right to enjoy life, can we have agreed to forfeit that right to live while God shall spare our lives, which is the essential precedent condition of all our other rights? Property may be diminished, and afterwards increased. Liberty may be taken away for a time, and subsequently restored. The wound which is inflicted may be healed, and the wrong we have suffered may be atoned for; but there is no Promethean heat that can rekindle the lamp of life if once extinguished. Can it be, then, that while property, liberty, and personal security are guarded and hedged in on every side, by the strict provisions of our fundamental constitution, that life is uncondi-

tionally thrown into the common stock, not to be forfeited in a specific case, agreed upon beforehand at the organization of our society, but in all such cases as the popular voice may single out and make capital by law? Have we entered into any such compact?

“*The burthen of proof* is wholly upon those who affirm that we have so agreed. Let it be shown that mankind in general, or the inhabitants of this commonwealth in particular, have agreed to hold their lives as a conditional grant from the State. Let it be shown that any one individual, understanding the bargain, and being free to dissent from it, ever voluntarily placed himself in such a miserable vassalage. Let there, at least, be shown some reason for supposing that any sane man has of his own accord bartered away his original right in his own existence, that his government may tyrannize more heavily over him and his fellows, when all the purposes of good government may be amply secured at so much cheaper a purchase. In no instance can this preposterous sacrifice be implied. It must be shown by positive proof that it has been made, and until this is undeniably established, the right of life remains among those reserved rights which we have not yielded up to society.

“It belongs to those who claim for society the rightful power of life and death over its members, as a consequence of the social compact, to show in that compact the express provisions which convey that power. But it cannot be pretended that there are or ever were such provisions. It is argued, as boldly as strangely, that *this right is to be implied from the nature of the compact*. It may seem unnecessary to reply to such an assumption; but it has often been advanced, and for that reason deserves our notice. In point of fact, there is no social compact actually entered into by the members of society. It is a convenient fiction—a mere creature of the imagination—a form of expression often used to avoid long and difficult explanations of the real nature of the relation between the body politic and its individual members. This relation is not, strictly speaking, that of a compact. It is not by our voluntary consent that we become each of us parties to it. The mere accident of birth first introduced us, and made us subject to its arrangements, before we were in any sense free agents. After we had grown to the age of freemen, and had a right to a voice in the common concerns, what alternatives had we then left? Simply these. Resistance to the social compact, as it is called, under the prospect of producing ruin, confusion, anarchy, slaughter almost without bounds, and finally ending in a new form of the social compact, much more objectionable than that which

had been destroyed, if the resistance should prove successful: should it fail of success, incurring the penalty of treason, a cruel death, to such as have not been fortunate enough to fall in the field of battle. Flight from the social compact, that is to say, flight not only from one's home, friends, kindred, language and country, but from among civilized men, perhaps it may be said from the fellowship of the human race. Or, lastly, submission to the social compact, as we find it, taking the chance of our feeble endeavors to amend it, or improve the practice under it. To this result almost every man feels compelled by the circumstances in which he finds himself; circumstances so strong as to force from an inspired apostle the declaration, though he wrote under the tyrant Nero, a monster of depravity, "the powers that be are ordained of God; whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive unto themselves damnation."* With whatever latitude this is to be understood, and there are cases generally supposed to justify resistance to the utmost extremity, it is certain that submission to the existing constitution of society is, in ordinary cases at least, a duty and a necessity also. How then can that be a compact into which we are forced by the irresistible influence of our circumstances, and how can submission be regarded as a voluntary acquiescence, when there is no door open to avoid submission, except such resistance, or such a flight as has been described? It is a palpable folly to pretend that an actual, voluntary compact exists, and they who derive the right to punish capitally from any supposed social compact, must first suppose an agreement which the facts in the case show was not and never could be freely entered into by the individual members of society; and then from that purely imaginative agreement proceed to draw an implication, also purely imaginary, and which it would be absurd and monstrous to derive from such premises, even if such a general compact as is supposed in arguments like these had been actually formed. To state this theory is sufficiently to refute it, yet it is that which has been most frequently relied on.

"But let us carry this examination one step farther. Not only has no man actually given up to society the right to put an end to his life, not only is no surrender of this right under a social compact ever to be implied, but *no man can*, under a social contract, or any other contract, *give up this right to society*, or to any constituent part of society, for this conclusive reason, that the right is not his to be conveyed. Has a man a right to commit suicide? Every christian must

* Romans xiii. 1.

answer, no. A man holds his life as a tenant at will,—not indeed of society, who did not and cannot give it, or renew it, and have therefore no right to take it away—but of that Almighty Being whose gift life is, who sustains and continues it, to whom it belongs, and who alone has the right to reclaim his gift whenever it shall seem good in his sight. A man may not surrender up his life until it is called for. May he then make a contract with his neighbor that in such or such a case his neighbor shall kill him? Such a contract, if executed, would involve the one party in the guilt of suicide, and the other in the guilt of murder. If a man may not say to his next neighbor, “when I have burned your house in the night time, or wrested your purse from you on the highway, or broken into your house in the night, with an iron crow, to take a morsel of meat for my starving child, do you seize me, shut me up a few weeks, and then bring me out and strangle me, and in like case if your turn comes first, I will serve you in the same way,” would such an agreement between ten neighbors be any more valid or justifiable? No. Nor if the number were a hundred instead of ten, who should form this infernal compact, nor if there should be six hundred thousand or seven hundred thousand, or even fourteen millions, who should so agree, would this increase of the number of partners vary one hair’s breadth the moral character of the transaction. If the execution of this contract be not still murder on the one side and suicide on the other, what precise number of persons must engage in it, in order that what was criminal before may become innocent, not to say virtuous, and upon what hitherto unheard of principles of morality is an act of murder in an individual, or a small corporation, converted into an act of justice whenever another subscriber has joined the association for mutual sacrifice? It is a familiar fact in the history of mankind, that great corporations will do, and glory in, what the very individuals composing them would shrink from or blush at; but how does the division of the responsibility transform vice into virtue, or diminish the amount of any given crime? The command, “Thou shalt not kill,” applies to individual men as members of an association, quite as peremptorily as in their private capacity; and although men in a numerous company may keep one another in countenance in a gross misdeed, and may so mistify and confuse their several relations to it, as that each one may sin ignorantly, and therefore in the sight of the searcher of hearts be absolved from intentional guilt, still that it does not alter the true nature of the act must be obvious, as also that it is equally our duty to abstain from a social as from a personal crime, when once its criminality is clearly understood.”

It would appear that the justice of capital punishment is not manifested under any specific grant of power to government for its infliction. Where then shall we look for its justification? Is it to be allowed that the nature of certain crimes is such that justice requires a retribution equal to that of the death punishment? Does justice demand a sacrifice of life as an atonement to society for the commission of particular offences? Who shall determine the division line marking off those offences which in justice must be punished by a forfeiture of life? And are we to recognize the principle, that retribution and vengeance are ends desired by the infliction of punishment? We hold that none of these positions can be maintained. Erring, sinful man, with his limited knowledge, has not been constituted a judge with such fearful powers against his fellow man. It is sacrilegious presumption to assert that the Deity requires retribution of sinners for the purposes of punishment. His design in punishment, as in all his works, is for good, and proceeds from love. We are not allowed to interpret the mystery, but we do know His love is co-equal with his wisdom and his power; and that all are made to work together for the good and happiness of his creatures. But we cannot claim for finite man, the wisdom or the love which shall thus properly prescribe retributions, nor should he be allowed the power to exact a retribution which is final and eternal in its consequences. The only justification for punishment on the part of government, is the reformation of the offender and the prevention of crime by means of example. These are the only legitimate objects of punishment as inflicted by men upon their fellows, and sanctioned only because it is demanded for the welfare of society. With reference to the first, the death punishment in most cases operates as an entire defeat of the end proposed to be attained, and as regards the prevention of crimes, before this horrid punishment can be justified, it should be demonstrated beyond a doubt that no other means as effectual can be substituted, and that therefore, as of necessity, justice to society requires of the criminal the sacrifice of his life.

In viewing the subject in connection with the duty incumbent on society in the exercise of the right to punish crimes, we will first consider the obligation to reform the offender. When we reflect that the great object of this life is to make preparation for the future, and fully recognize the importance of that great work, how awful does the responsibility become which authorises the depriving of a fellow being of life before it is required of him at the hands of Him who bestowed it, and who had allotted a period which in His wisdom was requisite for the purposes of that being's existence! The idea

that the certainty of death at a particular period, which attends the sentence of capital punishment, acting as an inducement to repentance and reformation, is fallacious, and not sustained by our general observation ; but, on the contrary, is directly contradicted by those whose experience in personal intercourse with the unfortunate victims of the death penalty, has given them the best opportunity to judge. The awful period which intervenes between the sentence and the execution, is too much occupied by the thousand agonizing thoughts and the daily trials and excitement of feeling incident to the horrible occasion, to give the proper opportunity to effect the work of repentance and reformation, which a long life is considered too short satisfactorily to affect. The author of "Old Bailey Experience," whose opportunity of observation was very extensive, says that "in nineteen cases out of twenty, there is no true repentance; most of them die careless about their former course of life, or of the world to come." Here let us pause and reflect on the tremendous responsibility which society has assumed, in thus sending out of life so many fellow-beings, long before the period of probation allotted them by their Creator, has been exhausted; let us consider this bloody tragedy in connection with our faith, that "as the tree falls so it lieth," and that "after death comes the judgment," and that the soul of man is immortal. And when we have farther considered that many of those who have been thus abruptly precipitated with all their sins into eternity, may have been innocent, and that society should have allowed them to have finished the term of life granted by their Creator, and that if guilty, many might have been reformed and perhaps made some reparation to society, or at all events, might have repented of their sins and died prepared for judgment, then have we not good occasion to shudder at the tremendous responsibility which each individual in society assumes when, for offences against that society, we deprive the offender of his life; and if these thoughts distress us by their importance and solemnity, we are not to avoid them from the belief that, as it is an institution of government, the responsibility does not attach to us as individuals. It is a maxim as true in morals as it is in law, that "what one does by another he does himself," and in a government of the people, where the laws are made and executed by the direct representatives of the people, every individual of that government should feel himself to some extent responsible for the acts of his government.

We will close the consideration of this part of our subject by extracts from the report of Mr. O'Sullivan, which are admirably calculated to enforce on the mind the thought of the solemn and tremen-

dous responsibility which may be resting on society in its adherence to the death punishment.

“ Directly connected with the point of view in which the question has been above considered, is another, upon which the committee have no language adequate to the expression of their sense of its solemn importance. “ *He who shortens a human life,*” was the emphatic remark of the late venerable philanthropist, Wilberforce; “ *puts in jeopardy a human soul.*” That the restraint of this consideration was so little regarded under the Mosaic law, will perhaps excite less surprise, when we reflect on the fact, that none of the institutions of that law, theoretical as was the entire form of the civil and social organization which its author established, contain any allusion to the doctrine of the immortality of the soul and a future state of retribution for the sins of human life; and though it appears in a single passage in the book of Job, and, at a much later day, frequently amid the prophetic inspiration of the Psalms, yet there certainly appears some reason to presume, (according, at least, to the well-known views of the learned Bishop Warburton,) that the knowledge of that highest of human truths was purposely withheld, at least from the mass of the people, in the age of the formation of the Mosaic system of institutions; for reasons whose mystery it is not for us to attempt to fathom. Without going at all into the merits of the profound theological controversy to which this question has given rise, the committee may at least remark, that, after the reception of that distinct and direct revelation on this subject, which it was one of the leading objects of the mission of the Messiah to teach, and of his resurrection to illustrate, we are now placed in a position, in relation to the question of the lawfulness of the destruction of human life, (except under the absolute necessity of self-defence,) very different from that from which the Jews might perhaps naturally regard it. And the question is much more easy for the one side to advance than for the other to meet, whether that comparative indifference to the sanctity of human life, which is seen to pervade the public institutions and habits of all the nations composing the community of Christendom, is not in truth, at bottom, a practical evidence of a general state of real, essential unbelief, pervading their entire social framework, as to the very fundamental principles of Christianity, which gives the unanswerable lie to all the public and private professions with which it is ostensibly maintained, as the pretended animating principle of their civilization. This is a very serious question, to which the committee leave it to others to reply. They content themselves with presenting, to this body of Christian repre-

representatives of a Christian people, the inquiry to which it will be easy to return a practical answer, whether a law shall be longer continued among us, the effect of which is to cut off annually from our midst a certain number of our fellow men, in the full vigor of young life and health, for the crime of an hour, and to hurry them thus—red and reeking with recent guilt—in a state of preparation at the best most lamentably doubtful—to that last, irrevocable judgment on which we profess to believe hangs that most awful of issues, the eternal fate, for good or for ill, of the human soul. ‘Dying as those unhappy wretches often do, who knows what their future lot may be?’ was the remark of Sir Wm. Meredith on the floor of Parliament. ‘It is a very important inquiry,’ says an eloquent writer on this subject, ‘whether or not the punishment of death can have a fatal influence on the destiny of the soul, producing what may emphatically be termed its ‘death!’ On this subject we should both think and speak with humility, if not with terror. If it could be proved, that, during the lapse of revolving ages, from the time that man began his existence, either by wanton murder, or legal sacrifice, one immortal spirit has been plunged into torment, which, had life been spared, would have found a different fate, I might close the argument. It is the consideration that the future happiness or misery of the human spirit depends upon the character it sustains when it leaves the present state of being, which, above all others, ought to prevent our so punishing the crime of murder, as to produce or risk such irretrievably awful results, since souls are of equal value in the sight of God, and at his disposal only. Murder is indeed a most horrible offence, yet even for *such* an offence was the blood of Christ shed as an atonement ; but without repentance and faith no sinner can be saved, and without life there can be no repentance, since life is space given for it. By what authority do we limit the space ordained by the Almighty, to exemplify the triumphs of divine grace? In both crime and punishment, an act is committed, the effects of which can never be remedied. In the hurry and tumult of legal terror, just in that state of mind which renders calm reflection impossible, we pass the convict from an earthly, and perchance erring tribunal, to his last audit at the bar of his Judge. We send our victim to his account, and he may go to it hardened and impenitent, in spite of the spiritual counsel with which we furnish him; and if by a certain *hour* the great work of conversion is not completed—if by a specified moment the dreadful fortifications of ignorance, in which the prince of darkness has entrenched himself, be not demolished, we then send this poor, bewildered wretch to a destiny of hopeless damnation ! But can we be certain that divine grace would never have reached his heart? The

silence and darkness of eternity shroud this subject in uncertainty and gloom; but in forming our rules of conduct, we are to reverence the great Governor of the Universe, and not insult him in the nearest precincts of his throne—the most valued portion of his dominion—the empire of the human soul!

“To see a man, cut off by the sentence of the law,” writes another, with all his transgressions on his head, ending his life in reckless blasphemy, in stupid insensibility, in hopeless despair, or under the influence of that too often deceptive repentance which is the mere offspring of terror, and which we may learn to appreciate at its just value, by a reference to the after life of most of the criminals who unexpectedly receive a pardon, is indeed too tremendous a spectacle to be witnessed or reflected upon, without the deepest emotion!”

“Who will venture to say,” pursues the same writer, “that the most hardened and depraved among those who pay the penalty of their guilt, if he had been secluded from the contagious society of his associates—if he had been submitted to the influence of a process of moral and religious instruction—might not have unfeignedly repented of his past enormities, expiated them in a way most beneficial to his injured country, and at length given that country the satisfaction of believing that a transgressor had been reclaimed from his errors, and a soul rescued from perdition?”

“If we consider the spirit of man as immortal,” writes an anonymous author, “as rising from the stroke of death unto untried worlds, we shall feel that all capital punishments are full of unknown errors. When the minister of justice condemns a criminal, he knows not the extent of the misery that he is denouncing. He performs an irrevocable act, the consequence of which he dares not even to imagine. He estimates, and very lowly estimates, only the joys from which he is tearing the dying culprit. But let the orthodox, above all, pause; let all those who maintain that life is but a trial for eternity—that its few fleeting moments are destined to decide the fate of numberless ages—that as man dies, so he remains *forever*, tortured with anguish and polluted with guilt, or blooming in unfading joy and exalted goodness—let these pause and reflect on the consequences of the irrevocable sentence. Let them image, if they dare image to themselves, the horrors, unspeakable in their intenseness, as they are lasting in their duration, which await the guilty in a world of unchanging realities. One single stroke of mortal vengeance has closed

the account of the accusing angel—has set a dreadful period to the little space of trial—has hurled a fellow-creature, yet covered with unrepented crimes, to that bar from whence there is no appeal: and that it has, perhaps, fixed him in guilt and despair as long as the throne of the Almighty endures. Had he lived, whom the hand of justice hurled to unfathomable ruin, he might have become an heir of immortal purity, and crowned with unfading bliss. He might have stood triumphant on the tomb of nature, and proceeded advancing in goodness and joy, delighted with the smiles of an Almighty Father. The very imagination of the ruin they have accelerated, makes the advocates of death tremble; while it should compel all who believe in a doctrine so terrible, to deny that a power so tremendous is committed to fallible man, however exalted by fortune or by goddess. There is a voice from the tomb which cries to him to spare, who must one day himself be tried at a great and majestic tribunal! Nay, if the stability of the whole frame of civil governments and human institutions demanded the sacrifice of one *guilty* individual, we should doubt, if we felt the influence of our stern creed, whether it would not be of less moment for the whole to perish, than for one immortal spirit to be made subject to the eternal horrors of omnipotent vengeance; rather that they should sink into the dust with all their glories, than that a punishment should be inflicted which may continue *forever* without hope or alleviation.”

Having seen that the death punishment is not enjoined by any imperative precept of the Bible, and that it is unjust in its nature and not calculated to promote one of the two legitimate objects of punishment, the reformation of the offender, we now proceed to show that it is inexpedient as a measure for the prevention of crime by the means of the example, which, together with the reformation, are the only justification of punishment of any description.

It is the dictate of nature that in self-defence we may take the life of him who will deprive us of ours, unless thus prevented; but this is sanctioned only in the extremity where there is no escape excepting through the dreadful alternative, and then the law properly terms the event justifiable homicide. The advocates of capital punishment justify their *judicial homicide* upon the same plea of self-defence; they claim that the law is required to act for society in this, as individuals, under a dictate of nature and by the sanction of the laws, are prompted and allowed to do. The reasoning is fallacious, inasmuch as the cases are not parallel. The individual who takes the

life of him by whom he is assailed with a murderous intent, acts from the momentous and critical necessity of the case, and if justifiable, must feel the conviction that it was the only means of preserving his own life; not so with the death punishment as inflicted by law on the criminal, his offence has transpired, the evil has been done and is irremediable.

The death of the murderer will not restore the life of the murdered man, nor will the execution of him who has set fire to an inhabited dwelling reinstate the edifice or recompense its inmates, nor will the hanging of the traitor indemnify his country against the effects of his treason. The judicial homicide, which the law requires when these offences have been committed, takes place in the estimation of the law, irrespective of the deeds which have been done unalterably and irremediably. The life of the criminal is taken not as a retribution or recompense for the crime, but that the example of the death punishment inflicted upon him may prevent the repetition of a similar crime at some *future* time by some *other* individual.

When we consider the sanctity of life as impressed upon us by every dictate of reason, or estimate its momentous value as revealed under the light of the Christian religion, we should be placed above all doubt before we are required to sanction the death punishment upon the plea that it is necessary for the protection of society against crimes which *may be* perpetrated. The writer in the North American review, above quoted says:

“ And we do say, if it be justly a part of all criminal law, that no jury shall pronounce a man guilty, while there is room for one *reasonable doubt* of his guilt, much more is it the duty of society to save life from that uncertain judgment and awful peril, while there is one ‘reasonable doubt’ of the clear right and absolute necessity. This is not merely an equal, but a paramount duty, inasmuch as it is the first decision, on which all the rest depends, and which involves the whole responsibility. The community are bound to consider themselves the grand jury, whom God and their own act have made judges of the law, as well as the evidence which alone should satisfy us. ‘To shed the blood of our fellow creatures is a matter that requires the greatest deliberation, and the fullest conviction of our own authority; for life is the immediate gift of God to man; which neither he can resign, nor can it be taken from him, unless by the command or permission of him who gave it, either expressly revealed or collected from the laws of nature or society, *by clear and indisputable demonstrations.*”

Where life is taken for self-defence the necessity is the justification, and no man will stand excused in his own conscience, nor will he be exonerated by the law, if the necessity is not clearly and indisputably demonstrated. How is it with the governments which take the lives of criminals to *prevent* crime? Before they enacted the laws which sanction the infliction of the death punishment, was the necessity of such enactments for the proper security of society made manifest, as Blackstone says it should be, by "*clear and indisputable demonstration?*"

The history of capital punishment shows that its institution has not been the result of a necessity proved in the experience of nations, but rather that having its origin in some of the worst passions of human nature, it obtained in the society of men in its earliest and most rude stage, being prompted by a spirit of revenge and retaliation. In its institution amongst the earlier stages of society, it is justified altogether upon the right to take vengeance and to claim retribution, but when men advance in civilization and refinement, and the better feelings of our nature are developed, then the institution which so directly conflicts with those feelings is forced to look for its justification upon principles of action more in harmony with the morals and tone of sentiment which characterize men in advanced stages of society. This is true alike in nations whose advancement in civilization has been solely under the guidance of reason, or where they have been enlightened by revelation. Rome under Romulus derived its increase of population from the immigration of criminals, and the murderer was honored in the land of his adoption, whilst the sanctity of life was but little regarded or protected. When that nation had become the mistress of the world and was as conspicuous for its refinement in morals as it was for the extent of its dominion, then we find its moralists inveighing against the death punishment. Cicero says:

"Away with executioner and the execution, and the very name of its engine! not merely from the limbs but from the very thoughts, the eyes, the ears of Roman citizens! for not alone the occurrence and endurance of all these things, but also the liability, the apprehension, even the mere mention of them, are unworthy of a Roman citizen and a free man."

The plea of necessity in defence of this institution cannot be sustained by proof on the testimony of experience, but rests solely upon an assumption based upon a habit of thought and the prejudices of education, and, as there is reason to fear, often upon the right to retaliate or take vengeance.

The right to inflict the death punishment—and its practice has so generally prevailed—that, in our review of the history of nations, in order to obtain the proof of experience, we are confined to the exceptions which have occurred from the general rule, and to certain modifications of penal codes in particular instances. As far, however, as the voice of history is heard in this matter, it speaks wholly adverse to the plea of necessity, and gives all its testimony in favor of the humane reform for which we are contending. In nations where the death punishment has been inflicted with the least mitigation and executed the most frequently, there we find capital offences most frequent, and the sanctity of life the least respected.

Before turning to the page of history for its evidence in favor of our position, we beg leave to quote the following general remarks on this head from the North American Review.

“Capital punishment has not prevented murder. It has been often inflicted, it has slain its thousands and tens of thousands, and still its work goes on, and still its power is defied. No man can say, that it has had power in proportion to its magnitude, or to that expectation which has been its defence. No man can say, that it has done any good compared with the sacrifice of a single innocent life, even if we think nothing of the violent termination of a guilty life. Indeed, who can show that it has done any good at all? It has not prevented murder. It has not lessened the number of murders. So many have they been, that, had capital punishment been abolished, the frequency of crime would be ascribed to that. Seventy-two thousand persons were put to death in England, in the single reign of Henry the Eighth, making two thousand a year. But instead of deterring or preventing others, the number of victims seemed but to provoke anew, as by the sight of fresh blood, the appetite for crime and murder. The whole history of England and of France gives the same lesson. And the history of all nations, it is believed, will sustain the remark of Beccaria: ‘The countries and times most notorious for severity of punishments were always those in which the most bloody and inhuman actions, and the most atrocious crimes, were committed.’ The principle, indeed, that merciful laws afford more protection to society than severe, has the authority and express testimony of the first civilians in the world. By the strong voice of facts, the argument from self-defence is turned against the advocates of capital punishment. It has done its best and its worst for more than five thousand years. It has not abolished murder, or lessened

the number of its victims. How much longer term is needed for trial?"

We will cite now in a cursory manner the testimony of history, as speaking distinctly in advocacy of the abolition of death punishment; and it is a notable fact that it is in those periods of the history of nations, when they are enjoying the most reputation for justice and wisdom in their councils, that we find public sentiment most in favor of merciful laws. The sentiment of Cicero, quoted above, we find obtains with every race of man, whenever they arrive at a stage of refinement and intellectual advancement at which Rome stood when its great orator and moralist declared that wise and humane sentiment.

In the history of Rome we find as early as B. C. 553, a statute enacted entitled Porcia Lex, or Porcian Law, which prohibited the infliction of the death punishment upon any Roman citizen; substituting exile in its stead: and we learn from the history of that empire, for a period of nearly three centuries, constituting its golden age, that statute prevailed, and was considered to be so just in its character and beneficial in its effect, that even Cicero, in the height of his popularity as an orator, and of his influence as a statesman, was driven into exile to atone for his offence in violating the law by the infliction of the death punishment upon those who had been convicted as accomplices of Cataline in a most blood-thirsty and treasonable design against the State. What a contrast is here with our laws! In Rome, he who punished treason with death was considered to have committed an outrage against society, and suffered exile for the offence. With us it is considered a delinquency in duty and a culpable disregard of law, if prosecutor, witnesses, jurors, judges, and executioners do not all contribute their appropriate services towards depriving the traitor of his life!

It is objected by the advocates of the death punishment that the provision of the Portian law was partial, as it did not apply to slaves and foreigners; and because it was not observed in certain conspicuous cases connected with some high political excitements, and on certain critical emergencies. These exceptions prove nothing against the rule; on the contrary, it fairly may be claimed, if the exceptions had not been allowed, the beneficial effects of the law would have been even more conspicuous. In respect to its operation Montesquieu says,—“The penal laws of the kings and those of the twelve tables were nearly abolished during the republic,

either in consequence of the Valerian law, made by Valerius Publicola, shortly after the expulsion of the kings, or else in consequence of the Portian law. The republic was not worse regulated, and no injury was done to the police." And Blackstone bears testimony in behalf of the Portian law, which abolished capital punishment, in these words,—“In this period the republic flourished; under the emperors severe punishments were revived; *and then the empire fell.*”

“In ancient Egypt,” O’Sullivan states in his report, “under Saba-co, for a period of fifty years, as we are informed by both Herodotus and Diodorus Siculus, no capital punishments were inflicted, those penalties being changed, *with much success*, into stated kinds of labor; which example Grotius recommends to other nations.”

If in heathen nations, whilst as yet the immortality of the soul and the accountability in a future state for deeds done in this life, were unknown, the abolition of capital punishment was found to be thus beneficial, should nations enjoying all the light of Christian religion, recognizing the perfection of all its precepts, and fearing its denunciations against the transgression of them: should they continue to recompense to men evil for evil: should they under the plea of necessity, disregard the precept “thou shalt not kill!”

But we will for the credit of the Christian age, now consider the experiments which have been made in more modern times, and which we shall find testify clearly in our favor.

Russia stands prominent in the honorable list of modern experiments of the abolition of capital punishment. The notice of it, we will give in the language of O’Sullivan’s report.

“The Empress Elizabeth, of Russia, on ascending the throne, pledged herself never to inflict the punishment of death; and throughout her reign, twenty years, she kept the noble pledge. And so satisfactory was found its operation, that her successor, the great Catharine, adopted it into her celebrated Code of Laws, with the exception of very rare cases of offences against the state. “Experience demonstrates,” is the language of her “Grand Instructions for framing a new code of laws for the Russian Empire, Article 210, “that the frequent repetition of capital punishments has never yet made men better. If, therefore, I can show that in the ordinary state of society the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success. I said, ‘in the ordinary

state;’ for the death of a citizen may be necessary in one particular case; I mean, when, though deprived of liberty, he has still means and power left to disturb the national repose; a case which can never happen, except when a people loses or recovers its liberty; or in times of anarchy, when disorder and confusion usurp the place of laws. But while those laws bear quiet and peaceful sway, and under a form of government approved by the united voice of the nation; in a state defended against enemies from without, sustained by the firm basis of power and general sanction from within, and where authority is lodged in the hands of the sovereign,—in such a state there can be no necessity for taking away the life of a citizen. The twenty years’ reign of the Empress Elizabeth gave the fathers of the people a more excellent pattern than that of all the pomps of war, victory, and devastation, held forth by the most glorious conquerors.

“From that day to the present there have been but two occasions on which the punishment of death has been inflicted in Russia,—once under Catharine, on the person of a notorious brigand chief and rebel, Pougatcheff, who had long defied the government and committed great atrocities and devastation; and again at the commencement of the present Emperor Nicholas, on the suppression of a rebellion which, breaking out in the streets of the capital, filled them with blood, and was only suppressed by an extraordinary display of personal heroism on the part of the young Czar himself. Five of the thirty leading nobles engaged in this insurrection were put to death, rather as a political measure than as one of ordinary social justice. By an edict in the early part of his reign, he extended to Finland (before under the Swedish laws) the same wise principle of the abolition of the punishment of death, which had been found to work so successfully throughout the rest of the Russian dominions. The public sentiment is unanimous in Russia in the support of this principle; which remains, and will forever remain, unchanged as it was established by Elizabeth and Catharine. The Count de Segur, on his return from the embassy at St. Petersburg, in a letter published in the *Moniteur*, in June, 1791, declared that Russia, under the operation of this law, was one of the countries in which the least number of murders was committed, adding that Catharine herself had several times said to him: “*We must punish crime without imitating it; the punishment of death is rarely anything but a useless barbarity.*”

“Exile to Siberia—a far less severe doom than the proposed incarceration in the State prison for life—is the punishment which is found in Russia a sufficient substitute for that of death. This is made

either temporary or perpetual, accompanied with civil and political death, according to the degree of the crime. In the case of what are termed the "unprivileged classes," namely, the peasantry and artisans, the penalty of corporeal punishment, by the knout, is added, for crimes which with us are punished with the higher grades of penal severity; though its infliction, especially in any cruel degree, is at the present day comparatively rare, and can only be decreed by the formal decision of a criminal tribunal."

We will here also transcribe the rebuke of a Russian writer, quoted in Spear's Essay—"Blush! ye countries of a longer civilization, that Russia should teach you the celestial principle of reforming depraved morals, not by the sanguinary execution of inexorable justice, but by the mild and divine precepts of heavenly mercy." The Empress Elizabeth abolished the death punishment; and in the following words bears testimony in favor of the mercy-pleading reform: "Experience demonstrates that the frequent repetition of capital punishment never made man better. If, therefore, I can show that in the ordinary state of society the death of a citizen is neither useful nor necessary, I shall have plead the cause of humanity with success." Spear in his history states, as the information derived from the representatives of Russia in this country, that the occurrence of murders in that country, when considered in connection with their population and the rude character of many, is much less frequent than in other countries claiming to be of a higher grade of morals; and that public opinion with them was entirely settled in favor of the avoidance of all capital punishment.

We find in O'Sullivan's Report, the testimony in favor of the abolition of death punishment, derived from Howard's works on prisons; from which it appears that in the course of that great philanthropist's pilgrimage of love, at the date of his visit to Leeuwarden, in 1783, fourteen years had elapsed without a single execution; and that the prison was tenanted by but a few criminals, and they only guilty of minor offence. At Utrecht, neither in the city or province had there been an execution for twenty years; and he cites a period of seven years when there were but nine prisoners, and none guilty of a capital offence. In Brunswick, the capital punishment had not been inflicted for fourteen years, and the tower appropriated for criminals guilty of capital offences, had been unoccupied for a long time. "In Denmark, where executions were rare, a great number for child-murder were condemned to work in spin-houses for life, and to be whipped annually on the day when, and the spot where, the crime was committed; that this mode of punishment *was dreaded more than death*, and

since it was adopted *had greatly diminished the frequency of the crime.*"

The experience at Amsterdam in favor of the omission of the bloody penalty is also instanced in O'Sullivan's Report, as testified by Mr. Marryat in the House of Commons, April 12th, 1812: He said, "I was in Amsterdam, and I there had the happiness to learn that, during many preceding years, the punishment of death had been but twice inflicted. Imprisonment in the bettering houses and at hard labor are there substituted for capital punishment, *and the most beneficial consequences have resulted from this alteration.*"

A very conspicuous instance of a successful experiment in the abolition of capital punishment is cited in a work on the Punishment of Death, by Thomas Wrightson; published in London, 1837: Sir James Mackintosh had been recorder of Bombay, in India, for seven years, and availed himself of his opportunity to test by experiment the propriety of the humane reform for which he was an earnest advocate. In his farewell address to the grand jury of the supreme court at Bombay, (July 20th, 1811,) he makes the following statement of the result of his observations and experience.

"Since my arrival here in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, cannot be less than two hundred thousand persons. Whether any evil consequence has yet arisen from so unusual (and in the British dominions unexampled) a circumstance, as the disuse of capital punishment, for so long a period as seven years, or among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

"From May, 1756, to May, 1763, (seven years) the capital convictions amounted to 141, and the executions were 47. The annual average of persons who suffered death was almost 7, and the annual average of capital crimes ascertained to have been perpetrated, was nearly 20.

"From May, 1804, to May, 1811, there have been 109 capital convictions. The annual average, therefore, of capital crimes legally proved to have been perpetrated during that period, is between 15 and 16. During this period there has been no capital execution.

“ But, as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions ought to have been *forty*, in order to show the same proportion of criminality with that of the first seven years. And between 1756 and 1763 the military force was comparatively small. A few factories or small ports only depended on this government. Between 1804 and 1811, five hundred European officers, and probably four thousand European soldier, were scattered over extensive territories. Though honor and morality be powerful aids of law with respect to the first class, and military discipline with respect to the second, yet it might have been expected, as experience has proved, that the more violent enormities would be perpetrated by the European soldiery, uneducated and sometimes depraved as many of them must originally be, often in a state of mischievous idleness, commanding, in spite of all care, the means of intoxication, and corrupted by contempt for the feelings and rights of the natives of this country.

“ If these circumstances be considered, it will appear that the capital crimes committed during the last seven years, *with no capital execution*, have, in proportion to the population, not been much more than *a third* of those committed in the first seven years, notwithstanding the infliction of death on *forty-seven* persons.

“ The immediate periods lead to the same results.

“ The number of capital crimes in any one of these periods does not appear to be diminished either by the capital executions of the same period, or of that immediately preceding. They bear no assignable proportion to each other.

“ In the seven years immediately preceding the last, which were chiefly in the presidency of my learned predecessor, Sir William Syer, there was a very remarkable diminution of capital punishments. The average fell, from about four in each year, which was that of the seven years before Sir William Spear, to somewhat less than two in each year. Yet the capital convictions were diminished about one-third.

“ The punishment of death is principally intended to prevent the more violent and atrocious crimes.

“ From May, 1797, to May, 1807, there were eighteen convictions for murder, of which I omit two, as of a very particular kind. In that period there were twelve capital executions.

“From May, 1804, to May, 1811, there were six convictions for murder, omitting one which was considered by the jury as in substance a case of manslaughter with some aggravation. The murders in the former period were, therefore, very nearly *as three to one* to those in the latter, in which no capital punishment was inflicted.

“This small experiment has, therefore, been made without any diminution of the security of the lives and property of men. Two hundred thousand men have been governed for seven years without a capital punishment, and without any increase of crimes. If any experience has been acquired, it has been safely and innocently gained.”

We will give the experience of Belgium, as we find it stated in that most excellent treatise, “Thoughts on the Death Penalty,” a work well worthy the attention of all who take an interest in the abolition of capital punishment. The author, Charles C. Burleigh, has given the subject the laborious attention of a discriminating and philosophical mind, and has collated the facts and condensed and arranged the arguments in a form and with a force which, while it interests the reader cannot fail to give a bias of the mind in favor of the reform desired, if it does not fully establish its propriety and necessity. We earnestly commend the labors of this philanthropic author to the serious consideration of every citizen.

“BELGIUM.

“In Belgium the penalty of death, less and less often used since 1800, though not in form abolished, has been practically set aside since 1830, by commutation of all capital sentences, to imprisonment at hard labor. Joseph Hume stated in Parliament, in 1837, that he learned from the superintendent of a prison in which was a large number of capital convicts, that ‘from his experience’ this measure ‘tended greatly to soften the disposition of the mass of the people.’ In 1826–9, with 17 executions, the accusations of murder were 45; in 1831–4, with *no* executions, only 41. An official abstract of executions and capital convictions in 35 years beginning with 1800, shows: in the periods ending respectively with

	1804	1809	1814	1819	1824	1829	1834
Executions,	235	88	71	26	23	22	<i>none.</i>
All cap. con.	353	152	113	71	61	74	43
Of murder,	150	82	64	42	38	34	20

Whence it appears that as executions decreased, capital crimes diminished; insomuch that from over 70 a year, of which 30 were murders, when the executions were 47 a year, they fell to less than 9 a year, of which but 4 were murders, when none were executed. That the decrease of executions was not, as Cheever would have us think it, merely an *effect* of the decrease of crimes, seems plain from this; that in no period more than two thirds, in several less than half, and in one, not 30 per cent, of all the capital convicts were put to death. Edward Ducpetiaux, inspector-general of the prisons in Belgium, shows in his "Statistics of the Death Penalty," that the yearly average of murders in 19 years ending with 1814, with 28 executions a year, was 21; in the next 15 years, with less than 5 executions a year, not quite 8; and in the 5 ending with 1834, with no executions, only four. And he considers it as proved by experience, that the punishment of death 'is useless, unfit as a means of prevention, the object of general and continually growing repugnance, and can be replaced by safe-guards more efficacious;' adding that 'to combat and refute these propositions, denial will not suffice, but facts will be met with facts, figures with figures, and it must be proved that the laws of blood still find their justification in their necessity.' "

The experiment of Belgium has been cited by the advocates of capital punishment as an instance which tells, as Cheever says, "triumphantly in their favor." To arrive at this conclusion, however, a very partial and unfair statement of the case must be made. The Rev. Dr. Cheever, in his ingenious and elaborate efforts to sustain the gallows, makes strong points of Belgium in favor of his argument, and the general reader would be liable to be drawn to an erroneous conclusion, if he is not so fortunate as to discover the mist of sophistry and the allurements of eloquence with which the reasoning of that advocate of the death punishment is enveloped. No author is more skillful in the use of adventitious means to fortify himself in his positions than the Rev. Doctor, still, in this case, his ingenuity has not been sufficient as against the clear and more correct statement of the case given by O'Sullivan and Burleigh, showing, as is said by the former, "it is sufficiently clear, from the report of a minister of justice who went into his office the avowed opponent of this reform, that the Belgian experience has been decidedly favorable to it," the abolition of the death punishment.

In Tuscany, the experiment of guarding society against the occurrence of capital crimes, without the infliction of the death punishment,

was tried with eminent success. The Grand Duke Leopold, coming into power in 1765, under the wise and humane council of Beccaria, was induced to make a reform in the penal code. He recognized prevention of crimes and the reformation of the criminals as the only legitimate objects of punishment, and promulgated the abolition of the death punishment in these words: "We have resolved to abolish, and by the present law do abolish forever, the punishment of death, which shall not be inflicted on any criminal, present or refusing to appear, or even confessing his crime, or being convicted of those crimes which in the laws prior to these we now promulgate, and which we will have to be absolutely and entirely abolished, were styled capital." For a period of twenty-five years the domain of that royal and *humane* reformer was unpolluted by a single drop of blood judicially shed, and we will give his own words in testimony of its success: "With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to the most scrupulous attention to prevent crimes, and also a great dispatch in the trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare."

The advocates of the death punishment have made much boasting of the fact that it was re-established in Tuscany after the experiment of twenty-five years, asking with an appearance of great triumph if such an evil institution would have been reinstated if the necessity of the case had not demanded it. If the entire history of the circumstances of its restoration accompanied the question, they would not be earnest in propounding it. The success of the experiment was complete, and independent of the testimony of the grand duke of Tuscany, as quoted above, we have that of many writers, from among whom we will quote M. Berenger, in his report to the French Chamber of Deputies in 1840; and what Mr. Livingston said to the Legislature of Louisiana. The former, after adverting to the experiment in Tuscany for a period of twenty-five years, says, "and the mildness of the penal legislation had so improved the character of the people there, that there was a time when the prisons of the Grand Duchy were found entirely empty. Behold enough to prove sufficiently that the abolition of the punishment of death is capable of producing the most salutary effects." The testimony of Mr. Livingston, as in connection with Tuscany, we will quote as we find it stated in O'Sullivan's report:

“Try the efficacy of milder punishments,” says Mr. Livingston to the Legislature of Louisiana; “they have succeeded—your own statutes, all those of every State in the Union prove that they have succeeded in other offences; try the great experiment on this also. Be consistent; restore capital punishment in other crimes, or abolish it in this. Do not fear that the murderers from all quarters of the earth, seduced by the mildness of your penal code, will chose this as the theatre of their exploits. On this point we have a most persuasive example. In Tuscany, as we have seen, neither murder nor any other crime was punished with death, for more than twenty years, during which time we have not only the official declaration of the sovereign, that ‘all crimes had diminished, and those of an atrocious nature had become extremely rare;’ but the authority of the venerable Franklin, for these conclusive facts—that in Tuscany, where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment is inflicted with great pomp and parade, *sixty murders* were committed in the short space of three months, in the city and the vicinity. ‘It is remarkable (he adds to this account) that the manners, principles, and religion of the inhabitants of Tuscany and those of Rome are exactly the same. The abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations.’ From this it would appear rather that the murderers of Tuscany were invited by the severer punishments into the neighboring territories of Rome, than that those of Rome were attracted into Tuscany by their abolition. We have nothing to apprehend, then, from this measure; and if any ill effects should follow the experiment, it is but too easy to return to the system of extermination.” And again: “In Tuscany during twenty years the punishment of death was altogether abolished by the Grand Duke Leopold. Bonaparte afterward had it restored. On comparing three successive periods of twenty years each—in the first period capital punishment existing; in the second period abolished; and in the third again restored, as above mentioned; it is found that fewer crimes and fewer murders were perpetrated in the middle twenty years, while no executions took place, than in either the preceding or succeeding twenty years, while the scaffold was in use.”

The restoration of the bloody and inhuman code in Tuscany, was not on account of the failure of the experiment, but was one of those arbitrary acts of Napoleon, which he claimed, were necessary to promote *the interest of France*; we have the evidence of Louis Bonaparte on this head, given in a work published by himself. He

states that in a conference at Mantua, relative to the sovereignty of Tuscany which had been offered to him by the Emperor, being desirous to retain the mild laws and administration which had latterly prevailed, he asked his brother whether he would allow him to manage the government so far as related to the interior in conformity with his own judgment; which request was refused, and the reasons given in these words: "*The interest of France is the point to which everything must tend; codes, taxes and conscriptions; everything in your kingdom must be to the profit of mine. If I allowed you to make Tuscany happy and tranquil all travellers from France would envy it.*"

From this we learn that the abandonment of the humane experiment of Leopold did not take place from any doubt as to its success, but on the contrary, because it was found to be working so advantageously, and was making *Tuscany so happy and tranquil* that travellers from France would envy it, in contrast with their own blood-stained soil.

We find in Spear's Essays on Capital Punishment some testimony in favor of the experiment in England and Wales, which we will quote:

"ENGLAND AND WALES.—While writing on this subject, a very important document has just come to hand, which was presented to the British parliament. It comprises seven tables, and presents abundant proof, to employ the words of the report, 'that the penalty operates much more powerfully as an example of homicide for imitation, than as an example of terror to deter; and is, in fact and truth, a cause of the commission of murder.'

"The first table gives the commitments and executions for murder during the thirty years ending December, 1842, divided into five periods of six years each. They show that, in the last six years, with only fifty executions, the commitments for murder were fewer by sixty-one, than in the six years ending December, 1836, with seventy-four executions; fewer by sixty than in the six years ending December, 1830, with seventy-five executions; fewer by fifty-six than in the six years ending December, 1824, with ninety-one executions; and fewer by ninety-three than in the six years ending with 1818, when the executions amounted to the large number of one hundred and twenty-two.

“ The following are the results of Table III.

That in the years following the execution of all convicted, the commitments for murder, as compared with those of the previous year, decreased----- 2 per cent.
 Table IV., shows in the years following commutation, the commitments for murder decreased----- 35 do.
 Table V., that in the years following acquittals on the ground of insanity, the commitments for murder decreased----- 32 do.
 Table VI., that in the years following those in which there were commitments and no conviction, the commitments decreased----- 23 do.”

In this country there has never been as yet any experiment of the total abolition of the death punishment, but there exists in the penal codes of the various states such a distinction in character as to enable us to draw some conclusion from their operator.

In many of the States the death punishment is only inflicted upon those convicted of murder or treason, whilst in several of the States we find the bloody code much more comprehensive; and in an especial manner do we find in the criminal code of the Union, the killing prerogative amplified.

By Gordon's Digest, 1835, the following crimes are stated as subject to capital punishment.

Treason.

Murder.

Arson; dwelling house or other buildings.

Rape on the seas.

Robbing mail, second time.

Forgery; as passing counterfeit certificates, or other public security.

Piracy; one species, slave trade.

Confining slaves on shipboard, or offering them for sale.

Robbery on the high seas.

Setting fire to ship of war.

Burning ships of private property for the purpose of defrauding underwriters.

Pennsylvania and Mississippi are the only two States which confine the death punishment to murder--the latter considering duelling, where death ensues within the State, as murder, both against the principal and second. Most of the States which existed as colonies previous to the revolution, as also Florida and Louisiana, had their criminal code much more sanguinary than at present. We find in most instances, where a revision of their laws has been had, more or less blood is wiped from the statute book. The constitution of Pennsylvania, framed in 1776, by a convention of which Franklin was the president, contained this provision, "the penal law shall be reformed as soon as may be, and punishment made in some cases less sanguinary and in general more proportioned to the crimes." In 1794, the spirit of this provision was carried into execution by the enactment of a law by which the death punishment was abolished in all cases excepting for murder. The experience which has been had by that State for more than fifty years under its criminal code, thus humanely modified, is altogether confirmatory of the position which, we read in the "Laws of Pennsylvania, stat. of 1794," was assumed as the basis whereon to rest the criminal code, and which principle we find there stated in these words: "The design of punishment is to prevent the commission of crime and to repair the injury that hath been done thereby to society or the individual, and it hath been found by experience that these objects are better obtained by moderate but certain penalties, than by severe and excessive punishment: and it is the duty of every government to endeavor to reform rather than exterminate offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety." Burleigh, in his admirable treatise, gives the testimony of a judge of the court of criminal sessions for the city and county of Philadelphia, who had examined the official records with the view to ascertain the effect of mild punishment, that "those offences from which the terror of the gallows was withdrawn became less frequent after than they were before the change;" and this we learn from the record of the history of every nation and age, and from the inquiry and observation of our own times, to be the unvaried experience of every experiment made in criminal jurisprudence upon the principle that merciful laws are best calculated to protect society, and to effect all the justifiable objects of punishment; whilst on the contrary, we find in those countries where the penal code is written in blood, the remark of Beccaria is fully sustained, where he says: "The countries and times most notorious for severity of punishments, were always those in which the most bloody and inhuman actions, and the most atro-

cious crimes were committed." Seventy-two thousand persons were executed in the reign of the bloody Henry the Eighth, an average of two thousand a year; and we find none of the pages of the history of England so much polluted with blood-shed judicially and criminally; none so revolting in the narration of deeds of turpitude and violence as those which record the life and reign of that modern Nero with his Draconian code. The history of France tells the same tale of her bloody princes. In the history of our own country, we find Pennsylvania most merciful in her laws; and her records tell of the decrease of crime as the consequence. The investigations which have been had both in Europe and in this country of the records of the criminal courts for the purpose of obtaining data and statistics to assist the judgment in the consideration of the expediency of abolishing sanguinary and vigorous penalties, and substituting those of a more merciful and milder character, give as the result the most encouraging inducements to remove from our system of punishment all features of heathenism and of the dispensation of the former Revelation, which conflict so directly with the precepts of the latter Revelation, and are so revolting to those better feelings of our nature which become developed with our advancement in social and intellectual refinement. Burleigh in his notice of the comparison of the merciful and the bloody codes in our own country, writes as follows:

"The facts in our own country bear a like testimony. Wm. Bradford said, in 1795, he could not learn that those crime which were then capital in some states and not in others, or had been so but were not then, were 'any better repressed by the punishment of death than by a milder penalty.' Horse stealing, capital in Virginia, was 'of all crimes the most frequent' there. New-Jersey tried punishing it with death till 1769, and revived that penalty 1780, but after a few years experience 'was obliged' to give it up at the bidding 'of humanity and sound policy.' Forgery was more frequent in New-York, where it was capital, than in Pennsylvania, where it was not. Counterfeiting continental bills of credit, capital in Pennsylvania, was much more frequent there than in Connecticut, where it was not. In *two* years the cases of it were almost as many as of all kinds of forgery not capital, in *fourteen*. Since the revolution *twelve* persons had been indicted for arson, a capital offence, and only *two* for any other kind of malicious burning, not capital; although the former term takes in a much smaller class of acts than the latter."

It is to be hoped that the publication and general dissemination of the statistics relative to capital punishment, which of late have been

collected by the friends of the reform both in this country and in Europe, will have the effect to disabuse the public mind of the prejudice existing in favor of its necessity. There has lately been presented to the public a most valuable statement of those statistics, contained in letters on the Death Punishment, addressed by the Hon. Robert Rantoul to the Governor and Members of the Legislature of Massachusetts, under date of February 17th, 1846, and which have been republished in "The Spirit of the Age," a paper issued by the New-York State Society for the Abolition of Capital Punishment, at 140 Fulton-street, in the city of New-York. It would be a great gratification to the committee to be able to insert the same in this report, but their extent appeared to preclude the propriety of so doing, but we cannot refrain from the satisfaction of quoting some of the general remarks with which he prefaces his statement:

"I have already laid before the committee of the two houses, and will soon address to you in this public manner, facts which show that crime diminishes in proportion as the denunciations and administration of the criminal law are rendered milder and the rule of a barbarous retaliation abandoned; whence I infer that it will be our duty, as it will be our happiness, to introduce and extend, until it shall pervade our whole legislation, the spirit of benevolence, compassion and sympathy, which is the spirit of heaven, and to banish from our code the spirit of malice, hatred and revenge, which is the spirit of hell. When men act consistently upon the belief which they now generally admit in theory that the whole purpose of punishment is precautionary and not retributive, that brutal cruelty does not humanize him who suffers, him who inflicts, or him who beholds it; that after every instance in which the law violates the sanctity of human life, that life is held less sacred by the community among whom the outrage is perpetrated; that prisons are hospitals for the restraint of persons whose liberty would endanger the well-being of society, and for the remedial treatment of aggravated moral disease; then, and not till then, will the frightful catalogue of crimes committed in civilized countries be curtailed as rapidly as the remaining obstacles of intemperance, ignorance, and extreme destitution, and those untamed passions which the spectacle of blood stimulates, will allow.

"When one casts his eye upon the history of crime and punishment in modern Europe, the phenomenon which first attracts his notice is the prodigality with which the death penalty was formerly dispensed, and the prodigious advance which a milder system of re-

pressive policy has made during the eighteenth and the first quarter of the nineteenth centuries; and still more remarkably during the last twenty years. As this mitigation of punishment has been tried in every part of christendom, if any evil consequences had followed from it, some one would have been able to point them out, and to tell us when, where, and how long the mischief manifested itself. Yet among more than two hundred authors upon the subject, whose writings I have examined, I have never found but two who have seriously attempted to exhibit the evils which these successive meliorations of the law must have occasioned, if those wise men against whose indignant remonstrances these changes were effected, were right in their prognostications. The two champions of blood were the authors of "Hanging not punishment enough," published in 1701, and "Thoughts on Executive Justice," published in 1785; both which works are now reprinted and distributed by the opponents of the Death Penalty, to show the absurdities into which men of great learning and talent are forced, when they attempt to vindicate the operation of the gallows.

"Most of those who have regarded with favor existing death penalties, have united in the chorus of condemnation of those which have been repealed; so that no sooner is any one item stricken from the bloody catalogue, than the voices of its former defenders are silenced, and all the world seems to discover at once, that it has been practising for ages without a shadow of justification, a revolting cruelty.

"When we propose to take further steps in the path which thus far has been found to lead us in the right direction, the class of persons who seldom admit that the world may grow wiser, raise the warning cry that we set at naught the wisdom of our ancestors. It is best to inquire, then, without going back too far, what was the wisdom of the last two or three generations, in the matter of death penalties, how far have we departed from it, and what have been the consequences of that departure?

"It is quite immaterial what country we select for this investigation, as the results are every where the same. Some governments, however, afford us official data, much more complete and accurate than we can obtain elsewhere, and an argument founded on facts thus ascertained, is to be preferred, because it avoids the long controversies about the evidence of the facts advanced, to which we should otherwise be exposed. Let us first consult then the experience of the

two neighboring nations of Holland and Belgium. Both have laid aside the axe at last, to rust unused or very rarely to be drawn from its depository among the other relics of a barbarous age."

No one has taken a deeper interest in this important question, than Mr. Rantoul, and to him is the cause of the humane reform now greatly indebted for his laborious services in the accumulation of such a mass of valuable statistics; and to which the friends of the abolition of capital punishment can now with confidence refer, in reply to the assertions so broadly made by the friends of the gallows, that we are without any data as of experience to warrant the attempt of what they are pleased to call our "*hazardous experiment*." The reply of Mr. Rantoul's labors show, that in the experience of several nations in Europe, where either the death punishment has been entirely abolished or greatly circumscribed; that there, the specific crimes to which it had applied, invariably diminish. We refer with great satisfaction and confidence, all whose attention may be directed to this subject, to those most valuable and encouraging statistics.

The committee have endeavored to show, by a review of the experience of different nations in their criminal jurisprudence as connected with the suppression of crime and the protection of society, the necessity of the death punishment does not exist; we have been particularly studious to establish this point in our argument, as it is upon that consideration alone, that the friends of the institution can in this age, and in this country, expect to sustain it. We flatter ourselves that we have adduced reasons and facts which may serve to confirm those whose predilections and impressions are in favor of the merciful reform; and, that we have given those, whose prejudices, arising from education, habit of thought, or association, rather than from calm reflection and proper investigation, still attach them to the bloody code some cause to doubt the necessity of their depriving their fellow men of their lives, of sending them precipitately to their final account, long before the period of time allotted them by the Giver of Life, to prepare for that awful event has expired. If any doubt does arise in the mind of an advocate of the gallows of its necessity, can he for a moment longer contribute by his vote to its support? Will he sanction any longer by his voice, the existence of an institution entailing such fearful responsibilities upon society, and involving such momentous consequences to the criminal, when it is shown to be based in his estimation, on *doubtful* grounds? Does not nature, reason and conscience all conspire to demand that the necessity of incurring

such responsibilities and such consequences, should be based, as Blackstone says, upon "*clear and indisputable demonstrations.*"

The committee having shown as they think that the death punishment is not enjoined upon society by scriptures, that it is not required upon any principles of justice, and that the necessity of it does not exist for self protection, do not find that it is incumbent upon them to enter upon a consideration of the moral effect of an institution which so entirely outrages all the best feelings of human nature.

If the positions we have assumed are correct, then no other consideration can prevail, and none other should be entertained. All the moral considerations, however, attaching to the subject, as in connection with the criminal or with society, serve as collateral support of our position, and tend altogether to the discomfiture of those who lend their aid to the support of the gallows.

If the limits of this report did allow, the committee would endeavor to show the baneful influence of the death punishment upon the criminal, upon the individuals witnessing the execution, upon domestic life, and upon society. Those considerations are all urged by the authors who have written on the subject; and which alike serve to enlist the interest, and to determine the judgment of the reader in favor of the abolition of the death punishment, to the advocacy of merciful penal codes, and to the encouragement of every means for the *reformation* and *salvation* of the criminal. We conclude our general remark on the subject by another extract from the article in the North American Review, and from the sentiments of which we think none can dissent.

"Let law and religion be supreme. Let the violent and corrupting be restrained,—not encouraged, nor destroyed. Let the neglected and corrupted be helped,—not left to desperation. Let the ignorant be instructed, and the willing employed, the exposed protected, the fallen raised, and the innocent saved. The guilty must suffer; let them suffer. Let them be surely and justly punished. The murderer especially, the wilful destroyer, the violator of God's holy law and man's sacred life, let him know that he will suffer,—not alone in the tortures of an outraged conscience, but in exile from an outraged community, with time and solitude for busy remorse. Let him suffer—not in vengeance, that is not ours—not for satisfaction, that is impossible—but for the security of the good, the ter-

ror of the wicked, the penitence and regeneration of his own soul. Let God's first mark rest upon him, that none may slay him, but all recognize and reprobate, while they pity and would save."

That portion of the committee which has the honor and satisfaction of making this report, have felt themselves released from the necessity of entertaining very many collateral considerations which have an important bearing on this subject, from the knowledge that the archives of this Legislature contain the report of a select committee, made to this house on the 14th of April, 1841, by J. L. O'Sullivan, in which all the religious, philosophical, humane and social considerations are presented with an ability and with the evidence of an amount of labor and research, which has secured to its author an imperishable reputation in connection with this humane reform—and which treats in such an interesting and instructive manner the whole range of the question, that it would be presumption in any subsequent committee of this house to attempt to rival it, in force of argument—in beauty of style, or extent of usefulness. The committee have taken the liberty of extracting freely from its contents, and they respectfully recommend the perusal of the entire document to the members of this Legislature.

It is the opinion of those who make this report, that public opinion now demands that all the bloody parts of our penal code should be erased from our statute book, and that the wise sentiment of Catharine of Russia, "*we must punish crime without imitating it,*" is now fully responded to by the popular voice of this state. Throughout all the states of the Union the question of the abolition of the death punishment is every year pressed with increasing force upon their legislatures—and, to-day, whilst preparing this report, we have received the glad tidings that one of our sister states has come forth from under the cloud of past prejudices, and wiped from her statutes all traces of blood. On the 2d of May, 1846, the legislature of the state of Michigan passed a law for the abolition of capital punishment! !—Memorable era in the history of the decline and fall of the gallows in the western world! ! The committee cannot forego the satisfaction of inserting in this report a copy of a letter which brings this gratifying intelligence to us—we are desirous to give it a place on the records of this house as an important part of the history of the progress of this merciful reform—and we do so with additional pleasure, as it is addressed to one who has long been one of the most conspicuous and earnest supporters of our cause.

“DETROIT, 4 o'clock P. M., May 2d, 1846.

“DEAR GREELEY—I hasten to inform you that the sun has risen in the *West*, and I hope its rays will penetrate the darkness which has so long brooded over the East. But from figure to fact.

“The bill to abolish capital punishment passed the House this afternoon by a vote in the ratio of three to two. It had already passed the Senate by a vote of three to one. This improvement in the criminal code originated in the Senate. The vote of the House was for concurrence. In concurring, they added a non-essential amendment which will be acquiesced in at once by the Senate; and the halter and the hangman will then be among the things that were. ‘*Requiescat in pace*,’ [Rest in peace.] This measure of reform was carried, as it should have been, without any reference to party distinction. When will statesmen in New York awake, and try a measure recommended by Reason, Justice, Christianity,—a measure which cannot make matters worse—which may improve them. Philosophers, philanthropists and statesmen, will congratulate Michigan in having led the way from *legalized vengeance*, to justice tempered by forbearance. She has ceased to practice on the belief that legalizing murder by capital punishment makes murder infamous. She no longer thinks that if I burn your house, your burning mine will restore yours to its shape and use—that killing *one* man will restore to life another man already dead. ‘Let there be light.’ Yours ever, O. B. P.”

There are many encouraging indications in all the States, which induce the belief that the day has arrived which is to see the total abolition of the death punishment throughout the whole nation, and it is much to be desired that the great State of New York, which has always been so prompt and prominent in all movements of social, political, or legal reform, with many of its most conspicuous citizens the earliest and most steadfast advocates of this humane reform, should immediately follow the enviable lead of the State of Michigan.

In every direction and upon every consideration, we are urged to the prompt institution of this reform. We find where the death punishment is abandoned, murders and the other atrocious crimes for which it was the penalty, diminish in frequency, and that crimes decrease as the laws become more humane. We find that the abhorrence of executions is such that laws are passed to shut them off from the public gaze. We find that much difficulty is experienced in obtaining jurors to set in trial upon capital offences. We find that

societies are forming throughout Europe and in every State of our Union for the diffusion of information on the subject of capital punishment, and joining in a concert of action for its entire abolition. We find, as society advances in refinement and in intellectual and religious improvement, a more general and deeper feeling of sympathy is extended to the criminal, and most of all we find, (as is stated by Spear,) "Christianity affords the greatest encouragement. Its predictions are glorious. It looks forward to a time when men of every tribe and language will unite in one holy and harmonious society; when 'violence shall no more be heard in the land; when 'the knowledge of the Lord shall cover the earth;' when 'the wolf shall dwell with the lamb, and the leopard shall lie down with the kid, and the calf and the young lion and the fatling together, and a little child shall lead them.' Then 'judgment shall dwell in the wilderness, and righteousness in the fruitful field, and the work of righteousness shall be peace, and the effect of righteousness quietness and assurance forever; and all people shall dwell in peaceful habitations, and in sure dwellings, and in quiet resting places.' "

Under the considerations which have been herewith presented, and in the view of the encouraging indications in favor of the reform which are rising so generally throughout the civilized world, the majority of the committee (being four of the five,) do not hesitate to recommend to this Legislature the passage of an act to abolish capital punishment. Some difference of opinion exists with the committee in what manner the action of the Legislature should be taken, a portion desiring to have a law enacted immediately, the others thinking it most advisable previously to submit the question to a vote of the people at the next annual State election.

The majority of the committee, therefore, ask leave to introduce two bills; and a joint resolution rendered necessary by the provisions of the bills.

All which is respectfully submitted by a majority of the committee.

JAMES H. TITUS,
EZRA MARSHALL,
ELIAS DURFEE,
ABRAHAM PRIMMER.